



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2016-0240; FRL-9946-45-Region 9]**

# **Approval and Limited Approval and Limited Disapproval of Air Quality Implementation Plans; California; Northern Sonoma County Air Pollution Control District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on five permitting rules submitted as a revision to the Northern Sonoma County Air Pollution Control District (NSCAPCD or District) portion of the applicable state implementation plan (SIP) for the State of California pursuant to requirements under the Clean Air Act (CAA or Act). We are proposing a limited approval and limited disapproval of two rules; we are proposing to approve the remaining three permitting rules; and we are proposing to repeal three rules. The submitted revisions include amended rules governing the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under part C of title I of the Act. The intended effect of these proposed actions is to update the applicable SIP with current NSCAPCD permitting rules and to set the stage for remedying certain deficiencies in these rules; this proposal also seeks to remedy specific deficiencies identified in our recent action on the California Infrastructure SIP. If finalized as proposed, the limited disapproval actions would trigger an obligation for EPA to promulgate a Federal

Implementation Plan for the specific New Source Review (NSR) program deficiencies unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action.

**DATES:** Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2016-0240 at <http://www.regulations.gov>, or via email to [r9airpermits@epa.gov](mailto:r9airpermits@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, by phone: (415) 972-3534 or by email at [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

## Table of Contents

- I. The State’s Submittals
  - A. Which rules did the State submit?
  - B. What are the existing NSCAPCD rules governing stationary source permits in the California SIP?
  - C. What is the purpose of this proposed rule?
- II. EPA’s Evaluation
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
    - 1. Minor Source Permits
    - 2. Prevention of Significant Deterioration
    - 3. Nonattainment New Source Review
    - 4. Section 110(l) of the Act
    - 5. Conclusion
- III. Proposed Action and Public Comment
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. The State’s Submittals**

#### *A. Which rules did the State submit?*

On October 16, 1985 and December 11, 2014, California submitted amended regulations to EPA for approval as revisions to the NSCAPCD portion of the California SIP under the Clean

Air Act. Collectively, the submitted regulations comprise the District's current program for preconstruction review and permitting of new or modified stationary sources. These SIP revision submittals, referred to herein as the "SIP submittal" or "submitted rules," represent a significant update to the District's preconstruction review and permitting program and are intended to satisfy the requirements under part C (prevention of significant deterioration) (PSD) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act (minor NSR).

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the District and submitted to EPA by the California Air Resources Board, which is the governor's designee for California SIP submittals.

Table 1 – Submitted NSR Rules

Rule #	Rule Title	Amended	Submitted
130	Definitions	11/14/14	12/11/14
200	Permit Requirements	11/14/14	12/11/14
220	New Source Review	11/14/14	12/11/14
230	Action on Applications	11/14/14	12/11/14
240	Permit to Operate	2/22/84	10/16/85

The submittal of Rule 240 was deemed complete by operation of law six months after the date of submittal. 40 CFR part 51, appendix V. The remaining rule submittals were determined to meet the completeness criteria 40 CFR part 51, appendix V on February 20, 2015. A completeness finding must be made before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on each of the submitted rules.

*B. What are the existing NSCAPCD rules governing stationary source permits in the California SIP?*

Table 2 lists the rules that make up the existing SIP-approved rules for new or modified stationary sources in NSCAPCD. All of these rules would be replaced or deleted from the SIP if EPA takes final action on the proposed approval of the submitted set of rules listed in Table 1.

Table 2 — Existing SIP Rules

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
10	Permits Required	9/22/72	37 FR 19812
12	Transfer	9/22/72	37 FR 19812
18	Conditional Approval	9/22/72	37 FR 19812
130	Definitions	5/6/11	76 FR 26192
200	Permitting Requirements	7/31/85	50 FR 30943
220a	New Source Review	7/31/85	50 FR 30943
220b	New Source Review	7/31/85	50 FR 30943
220c	New Source Review	7/31/85	50 FR 30943
230	Action on Applications	7/31/85	50 FR 30943
240	Permit to Operate	10/31/80	45 FR 72148
240e	Mandatory Monitoring Requirements	12/21/78	43 FR 59489

*C. What is the purpose of this proposed rule?*

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the submitted rules adopted by the District as identified in Table 1. We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

## **II. EPA's Evaluation**

*A. How is EPA evaluating the rules?*

EPA has reviewed the rules submitted by NSCAPCD governing PSD and minor NSR for stationary sources for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, §51.160 through §51.164 and §51.166, and the CAA requirements for SIP revisions in CAA

section 110(l).<sup>1</sup> As described below, EPA is proposing a combination of actions consisting of limited approval and limited disapproval of Rules 130 (Definitions) and 220 (New Source Review); full approval of Rules 200 (Permit Requirements), 230 (Action on Applications), and 240 (Permit to Operate); and replacement of Rules 10 (Permits Required), 12 (Transfer) and 18 (Conditional Approval).

*B. Do the rules meet the evaluation criteria?*

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the various submittals, we find that NSCAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each submitted rule in accordance with the CAA and regulatory requirements that apply to: (1) general preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act and 40 CFR 51.160-164, and (2) PSD permit programs under part C of title I of the Act and 40 CFR 51.166. For the most part, the submitted rules satisfy the applicable requirements for these permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised PSD permitting requirements promulgated by EPA in the last several years; however the submitted rules also contain specific deficiencies which prevent full approval of Rules 130 and 220. Below, we discuss generally our evaluation of NSCAPCD's submitted

---

<sup>1</sup> CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

rules and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

## 1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D” of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified “major” stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality standards (NAAQS) are achieved. These general pre-construction requirements are commonly referred to as “minor NSR” and are subject to EPA’s implementing regulations in 40 CFR 51.160-51.164.

Rules 130 - *Definitions*, 200 – *Permit Requirements*, 220 – *New Source Review*, 230 – *Action on Applications*, and 240 – *Permit to Operate*, contain the requirements for review and permitting of individual minor stationary sources in NSCAPCD. These rules satisfy the statutory and regulatory requirements for minor NSR programs. The changes the District made to the rules listed above as they pertain to the minor source program were largely administrative in nature and provide additional clarity to the rules.

## 2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated “attainment” or “unclassifiable” for the

NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166. NSCAPCD is currently designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants.

The submitted rules contain the requirements for review and permitting of minor and PSD sources in NSCAPCD. The rules satisfy most of the statutory and regulatory requirements for PSD permit programs, but Rules 130 and 220 also contain some deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, 40 CFR 51.161(d) specifies that a public notice must be provided for all lead point sources, as defined in 40 CFR 51.100(k). The provisions of Rule 220 (b) cross-reference the definition of the term Significant in Rule 130 to provide specific public notice emission rate thresholds used to determine when public notice is required. Rule 130 provides thresholds for all NAAQS pollutants except lead. To correct this deficiency, the District should add an emission threshold for lead by revising the definition of the term "Significant" in Rule 130.

Second, Rule 220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W, as required by 40 CFR 51.160(f) and 51.166(f). Provisions pertaining to modeling requirements must also specify the requirements for using any alternative models. To correct the deficiency, the District should add the required modeling provisions to Rule 220.

Third, text in Rule 220, Subsection (b)(3) contains a significant typo concerning the requirements pertaining to stack height. This deficiency may be corrected by adding the missing word "not".



Finally, Rule 230 does not contain any provisions to satisfy the requirements of 40 CFR 51.166(r)(1) and (2) which require permit programs to include specific language providing that (1) “...approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law” and (2) that if “...a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements...” of the PSD program shall apply to the source or modification as though construction had not yet commenced on the source or modification. This deficiency can be corrected by adding the language found in 40 CFR 51.166(r)(1) and (2).

Compared to the existing SIP approved PSD program in Rule 220 (approved July 31, 1985), however, submitted Rules 130 and 220 represent an overall strengthening of the District’s PSD program, in large part because the rule includes updated PSD provisions to regulate new or modified major stationary sources of PM<sub>2.5</sub> emissions, which are unregulated under the existing SIP PSD program. Because submitted Rules 130 and 220 strengthen the SIP, we are proposing a limited approval and limited disapproval based on the deficiencies listed above.

### 3. Nonattainment New Source Review

The CAA defines “nonattainment areas” as air quality planning areas that exceed the primary or secondary NAAQS for the given criteria pollutant. The NSCAPCD is not designated nonattainment for any NAAQS. Because the NSCAPCD is not currently classified nonattainment for any NAAQS, we are not evaluating the submitted rules for approval under 40 CFR 51.165, which contains the requirements for nonattainment NSR programs.

#### 4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would “interfere with any applicable requirement concerning attainment and reasonable further progress. . . or any other applicable requirement of [the Act].”

NSCAPCD is currently designated attainment or unclassifiable/attainment for all NAAQS pollutants. We are unaware of any reliance by the District on the continuation of any aspect of the permit-related rules in the NSCAPCD portion of the California SIP for the purpose of continued attainment or maintenance of the NAAQS. Our approval of the NSCAPCD SIP submittal (and supersession of the existing SIP rules) would strengthen the applicable SIP. Therefore we find that this SIP revision represents a strengthening of NSCAPCD’s minor NSR and PSD programs compared to the existing SIP rules that we previously approved, and that our approval of the SIP submittal would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Given all these considerations and in light of the air quality improvements in NSCAPCD, we propose that our approval of these updated NSR regulations into the California SIP would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

#### 5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted rules satisfy most of the applicable CAA and regulatory requirements for the District’s minor NSR and PSD permit programs under CAA section 110(a)(2)(C) and part C of title I of the Act. However, Rules 130 and 220 contain certain deficiencies that prevent us from proposing a full approval and we are proposing a limited approval and limited disapproval of these two rules. We

do so based on our finding that, while these rules do not meet all of the applicable requirements, the rules represent an overall strengthening of the SIP by clarifying and enhancing the permitting requirements for major and minor stationary sources in NSCAPCD. Finally, we are proposing a full approval of Rules 200, 230, and 240, which will replace existing SIP Rules 10, 12 and 18. Our TSD, which is available in the docket for today's action, contains additional information on this rulemaking.

### **III. Proposed Action and Public Comment**

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of Rules 130 and 220, and approval of the remaining revisions to the NSCAPCD portion of the California SIP that governs the issuance of permits for stationary sources under the jurisdiction of NSCAPCD, including review and permitting of major sources and major modifications under part C of title I of the CAA. Specifically, EPA is proposing an action on NSCAPCD rules listed in Table 1, above, as a revision to the NSCAPCD portion of the California SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval of Rules 130 and 220, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of the proposed approval and limited approval and limited disapproval portions of this action is to update the applicable SIP with current NSCAPCD permitting regulations<sup>2</sup> and to set the stage for remedying deficiencies in these regulations.

---

<sup>2</sup> Final approval of the rules in Table 1 would supersede all of the rules in the existing California SIP as listed in Table 2.

In addition, on April 1, 2016 (81 FR 18766), EPA partially disapproved California's Infrastructure SIP Submittal for the 1997 and 2006 PM<sub>2.5</sub> NAAQS with respect to Northern Sonoma County APCD because it did not include requirements for a baseline date for PSD increments for PM<sub>2.5</sub>. If we finalize our proposed action, this Infrastructure SIP deficiency pertaining to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II) and (J) will be remedied, and we will update the approved SIP for California accordingly.

If finalized as proposed, the limited disapproval of Rules 130 and 220 would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless the State of California corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NSCAPCD rules as described in Table 1 of this notice. The EPA has made, and will continue to make, this document generally electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at U.S. Environmental Protection Agency Region IX (Air -3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

#### **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: May 3, 2016.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

[FR Doc. 2016-11621 Filed: 5/18/2016 8:45 am; Publication Date: 5/19/2016]